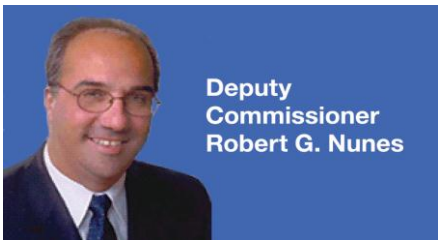
***City & Town* - January 2nd, 2014**

A Publication of
the Massachusetts
Department of Revenue's
Division of Local Services

City & Town

Amy Pitter, Commissioner • Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



Local Officials Directory

Municipal Calendar

IGR's & Bulletins

Workshops, Seminars & Events

What's New

DOR 360

MUNICIPAL DATA BANK

***City & Town* is published by the Massachusetts Department of Revenue's Division of Local Services (DLS) and is designed to address matters of interest to local officials.**

Editor: Dan Bertrand

Editorial Board: Robert Nunes, Robert Bliss, Zack Blake, Amy Handfield, Sandra Bruso and Patricia Hunt

In this Issue:

Getting It Done in Crunch Time

At the core of the mission of the Division of Local Services is the work we do in partnership with cities and towns to approve annual property tax rates and approve property values in certification years, as well as the approval of balance sheets to determine free cash and the interim year review of property values in communities not in the midst of a full-blown triennial revaluation.

This work involves countless phone calls, meetings, field reviews and all manner of communications with hundreds of local officials in each of the Commonwealth's 353 taxing districts.

Starting for the most part in September, the volume of work peaks in late November and the first half of December before the pace of approvals slows to a trickle in the 10 days before the end of the calendar year.

In the midst of this are the field advisors from the Bureau of Accounts and Bureau of Local Assessment, whose job is to assist cities and towns in completing their work and to review that work to make sure it is accurate. Along the way, there are sometimes difficult conversations as issues surface and resolutions are reached. We at DLS very much appreciate the cooperation we receive from local officials in getting tax rates approved and property values set. Our field representatives, DLS front-line workers, do a great job in answering questions and providing guidance along the way.

For years, DLS went through this annual process with no formal after-action review process. That changed last year, with the inauguration of the issuance of surveys sent to local assessors and to accountants/auditors/finance directors. We published the results of those surveys, a practice we will follow again this year as we work to continually improve DLS policies and procedures.

In fact, you will read in *City & Town* later this month the results of surveys already received from local assessors who have gone through the revaluation process in FY14. As of close of business on Monday, December 30th, DLS had set 338 tax rates, the same number set at this time a year ago. Of the 117 communities in the property valuation certification process, 114 have received preliminary certification and 113 final certification. Of the 349 LA-4 (new growth) reports received, 346 have been approved. And of the 256 balance sheets received, 243 have been approved certifying $790,989,737 in free cash.

These numbers reflect an enormous commitment from both local officials and DLS to insuring that tax rates and property values are accurately determined and properly reviewed. My thanks to all involved in this work, and for the time taken to let us know how we are doing and what we can improve on.

On behalf of DLS, we wish you all the best in 2014!

Robert G. Nunes
Deputy Commissioner and Director of Municipal Affairs
nunesr@dor.state.ma.us

Results of Schedule A Enhancements

David L. Davies - Information Technology Director

About a year ago, a survey on Schedule A submissions on DLS Gateway generated strong opinions on two issues:

1.) Re-formatting Part 3 to make it easier to enter online, i.e. make it like the Excel-based Auto Schedule A. Fifty percent of respondents said entering Part 3 online was either relatively or very difficult.

2.) For communities that find it valuable to organize their data in the

Excel-based Auto Schedule A, allow upload from that Excel file without having to re-enter data online. Sixty-four percent of respondents reported using some or the entire Excel program in preparing Schedule A submissions.

The DLS Response:

1.) Reprogram the online forms for Parts 2 through 6 to duplicate the format of the Excel-based program;

2.) Partner with the Community Software Consortium (CSC) to provide a no-cost bridge program available to any community to securely copy the data from the Excel-based Auto Schedule A to DLS Gateway.

This article is about the latter response. I alerted accountant/auditors to the coming bridge program in a June email. DLS speakers have mentioned it at conferences and DLS included details about it in the Excel program instructions. Testing and refinement continued in the early fall. Without further advertising, some fifty cities and towns to date (12/20/2013) have downloaded the program from the CSC website (http://csc-cloud.us/cloud/schedule-a/).

Forty-one communities subsequently submitted their Schedule A's. Comparing the bridge program download dates from the CSC and the Schedule A submission dates on DLS Gateway, the data suggest the bridge program has greatly sped up and simplified submission. The median elapsed time between download and submission is two days. Over one-third of communities downloaded the bridge and submitted their Excel-based data the same day. Previously, many communities would use Excel to organize their data and then would have to reenter it online. Communities of all sizes and locations used the bridge program from small western towns to large eastern cities.

DLS was able to directly and immediately address its stakeholders' concerns because of the flexibility and mission of the Community Software Consortium. The CSC is made up of and governed by Massachusetts municipalities who pay dues to underwrite technology solutions for members. In this instance, the CSC felt an investment that would quickly benefit all cities and towns, regardless of membership status, would help raise the organization's profile among local officials and demonstrate the kind of creative low-cost solutions it can provide.

We have had some feedback on the bridge program. One local official took the time to write, "I just uploaded my Schedule A

spreadsheet into the Gateway using your new Upload Option and I just wanted to say ***LOVE IT!*** Thank you for doing that. You just saved me hours of tedious work!"

If your experience is worth a comment, please let us know by emailing daviesd@dor.state.ma.us. This innovation happened because we asked and you responded.

Ask DLS

This month's *Ask DLS* features frequently asked questions about abatement applications. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us.

What is the deadline to apply for abatement?

Taxpayers must apply for abatements on or before the due date of the first actual tax installment for the fiscal year. G.L. c. 59, sec. 59. To be on time, the taxpayer's application must be (1) actually received in the assessor's office by the close of business on or before the application due date, or (2) postmarked by the United States Postal Service, as mailed first class postage prepaid to the proper address of the assessors on or before the application due date.

This deadline applies whether or not the taxpayer actually receives the tax bill. If the collector mails the bill to the proper address, the bill is deemed received by the taxpayer and the application deadline cannot be extended because a taxpayer does not receive the bill. However, if the bill was misaddressed, e.g., the taxpayer provided a timely change of address, but the bill inadvertently showed the prior address, the due date is determined by the mailing of a properly addressed bill under G.L. c. 60, sec. 3.

Does the abatement application deadline have to appear on the actual tax bills?

Yes, the actual tax bills for the year must state the abatement application due date. G.L. c. 60, sec. 3A(a).

What abatement application due date should be shown on the actual tax bills when the application due date falls on a day municipal offices are closed?

Bulletin 2008-10B provides detailed information about due dates that fall on non-business days. As it explains, under state law, if the due date for a property tax abatement application falls on a Sunday or legal holiday, the due date automatically becomes the next following business day. G.L. c. 4, sec. 9. If it falls on a Saturday and municipal offices are closed on Saturdays by vote of the municipality's legislative body, subject to charter, then the due date is automatically extended to the next following business day as well. G.L. c. 41, sec. 110A.

The due dates for property tax installment payments depend on the type of payment system the community uses and when the bills are mailed. G.L. c. 59, secs. 57 and 57C. As explained in our annual tax bill IGRs, the billing and appeals rights notice (bill reverse side) should continue to contain the statutory due dates as prescribed by applicable IGR. However, the front of the bills must display the exact due date of the installment payments, as determined by the date the collector actually completes the mailing of the bills. The due date of the first actual tax installment is also the due date for abatement applications, G.L. c. 59, sec. 59, and that due date must be stated on the front of the actual bills as well. Therefore, whenever the law extends these due dates, the extended date is the actual due date and must be printed instead.

Note that other closures of municipal offices do not extend the due date. If their offices will be closed for all or part of a due date, assessors should be proactive in making taxpayers aware when applications may be made in person. The message section on the bill may be used to provide the assessors' hours or provide notice of office closures on the due date. Other means may be used to disseminate information about making timely applications as well, including, for example, a tax bill stuffer, the municipality's website, the local newspaper, the local cable access channel and social media.

What if the wrong application due date is printed on the actual tax bills?

If the abatement application due date printed on the actual tax bills is later than the statutory deadline, the date printed on the bill applies, unless the error is the wrong year. G.L. c. 60, sec. 3A(a).

For example, abatement applications for fiscal year 2014 are due on February 3, 2014 in a quarterly community that mailed its actual bills on December 30, 2013. By mistake, the tax bills state that abatement applications are due February 13, 2014. That date applies instead of

February 3, 2014. However, if the tax bill mistakenly states that abatement applications are due February 3, 2015, they are due on the same date in the current fiscal year, i.e., February 3, 2014.

Can a taxpayer file an abatement application by FAX, e-mail or other electronic means?

Yes, the fundamental purpose of an abatement application is simply to give the assessors notice of the taxpayer's claim. Assessors of Brookline v. Prudential Insurance Co. of America, 310 Mass. 300 (1941). Although an abatement application must be "in writing" on an approved form, there is no express statutory requirement that it actually be signed with a handwritten signature. G.L. c. 59, sec. 59. The case law indicates it is sufficient for the application to be "in writing," which may also include "any mode of representing words and letters." See G.L. c. 4, sec. 7, Clause 38; Assessors of Boston v. Neal, 311 Mass. 192 (1942). A signature in an electronic filing may take any form intended by the applicant (or his agent) to authenticate the application as his own.

Therefore, applications may be made by FAX, e-mail or other electronic means. If the assessors have their own FAX number or e-mail address and direct applications to that number or address, the application must be received by the close of business on or before the application due date. If the application was FAXed or e-mailed to a general municipal fax number or e-mail address, the application must be delivered to the assessors' office by the close of business on or before the application due date to be timely.

May a taxpayer apply for abatement for more than one property in a single application form?

Yes, given that the fundamental purpose of an abatement application is simply to give the assessors notice of the taxpayer's claim, Assessors of Brookline v. Prudential Insurance Co. of America, 310 Mass. 300 (1941), a single application form could be used to apply for abatement of more than one parcel owned by the same taxpayer. However, under G.L. c. 59, sec. 61, applicants for abatement must include a sufficient written description of the real estate for which abatement is sought. Therefore, the taxpayer must identify and describe each parcel for which abatement is claimed.

May an application for abatement on the same property be filed by the owner assessed as of January 1 and a subsequent purchaser?

The assessed owner as of January 1 and subsequent purchaser (current owner) of a property both have standing to apply for abatement under G.L. c. 59, sec. 59. If an abatement is granted, a single abatement certificate naming all applicants should be issued. If a refund is due because the tax as abated has been paid, all applicants should be notified that the refund will be made upon receipt of instructions as to whom payment may be released.

We'd like to hear from you. Please send any questions you may have to cityandtown@dor.state.ma.us.

Revised Assessment Held Invalid

James Crowley, Esq., Bureau of Municipal Finance Law

The Appellate Tax Board (ATB) recently held that a revised assessment was invalid because the assessors failed to comply with the procedural requirements set forth in M.G.L. Ch. 59 Secs. 75 and 76. The decision is Wickles v. Board of Assessors of Hatfield, (docket #F312519, March 13, 2013). Assessors should be aware, however, of an amendment to the statute in 2010 that may result in a different outcome in other cases.

As you may be aware, if the assessors discover after the commitment of taxes for the fiscal year that taxable real or personal property was by mistake not assessed, then M.G.L. Ch. 59 Secs. 75 and 76 provide a mechanism whereby assessors may tax that property. The assessors make an omitted assessment when an entire parcel or personal property account is not assessed for the fiscal year. The omission or error must be unintentional "due to clerical or data processing error or other good faith reason." A revised assessment is different from an omitted assessment. The assessors make a revised assessment under M.G.L. Ch. 59 Sec. 76 when a parcel or personal property account is "unintentionally valued or classified in an incorrect manner" for the year. For example, a failure to assess a dwelling for a garage due to a data processing error would lead to a revised assessment. Prior to a 1989 amendment, these statutes required assessors to receive prior approval from the Commissioner of Revenue before issuing an omitted or revised assessment. After 1989, the assessors are permitted to make these assessments without prior approval from the Commissioner. By statute, however, the assessors are required to submit to the Commissioner annually by June 30th a statement

showing the amounts of additional taxes assessed for that year.

In this case, David and Lenora Wickles owned a split-level style house on Prospect Street in Hatfield. For Fiscal Year 2011, the Wickles were assessed for the house and three other garage-type structures. Total parcel valuation was $851,400 with a FY 2011 tax for approximately $9,500. The Wickles timely filed an overvaluation abatement application which the assessors denied. Less than a week after the denial, the collector in April 2011 sent a revised tax bill for an additional $1,200 taxes based on an increased assessment of $111,500. By letter, the assessors explained that in response to the abatement application the assessors hired a revaluation firm to make a "comprehensive inspection" which revealed the subject property was undervalued and misclassified as primarily residential when, in fact, it was a mixed use (residential/commercial) property. Not only did the taxpayers not get an abatement, their assessment had increased to $962,900 and their total taxes were now about $10,500 for FY 2011. They timely paid their tax bills, however, and appealed to the ATB.

Looking strictly at the statute, the ATB ruled that the revised assessment was invalid because the Hatfield assessors failed to return to the Commissioner of Revenue by June 30, 2011 a statement indicating the amount of additional taxes assessed through the revised assessment. In the ATB's view, this reporting requirement found in M.G.L. Ch. 59 Sec. 75 for both omitted and revised assessments was a condition precedent to the validity of the Hatfield revised assessment. It ruled that this procedural oversight rendered the revised assessment invalid, even though that statutory condition could not occur until after any omitted or revised assessments for the year were committed and in many cases, after the taxpayer had to determine whether to contest the assessment. The ATB did not address the substantive requirements of M.G.L. Ch. 59 Sec. 76, which are that the assessors "unintentionally" valued the property and classified the parcel in an "incorrect manner."

Having resolved the revised assessment claim in favor of the taxpayers, the ATB then addressed the overvaluation issue. The ATB held the taxpayers met their burden of proof and the parcel's valuation should be reduced to $729,500 with a resulting refund of about $2,400.

It is doubtful the revised assessment issue would be decided the same way today. The Municipal Relief Act in 2010 made certain statutory changes. Among them was an amendment to M.G.L. Ch. 59 Sec. 75, which took effect on July 27, 2010. Previously, there was

provisory language in M.G.L. Ch. 59 Sec. 75. Specifically, the statute read in pertinent part "*provided, however...*that the assessors shall annually, not later than June thirtieth of the taxable year...return to the Commissioner a statement showing the amount of additional taxes so assessed." (Emphasis added).

Today, the reporting requirement remains but the conditional language "provided, however" has been deleted. Arguably, neglecting to send a report to DOR by June 30 would not invalidate an omitted or revised assessment made for a fiscal year after the amendment took effect, i.e., for fiscal years 2012 and after. We will need another decision, however, to determine this issue.

MMA Conference Information

The Massachusetts Municipal Association's 35th Annual Meeting and Trade Show is scheduled for Friday, January 24th and Saturday, January 25th. DLS Deputy Commissioner and Director of Municipal Affairs Bob Nunes will host a workshop on Friday afternoon entitled, "State and Local Economic and Budget Outlook" featuring Administration and Finance Secretary Glen Shor and Department of Revenue Commission Amy Pitter.

To register, click here.

January Municipal Calendar

January 1	**Assessors**	**Property Assessment Date** This is the effective date (not for exemption purposes) for statewide valuation and assessment of all property for the following fiscal year.
January 31	**DESE**	**Notify Communities/Districts of Estimated Net School Spending Requirements for the Next Year** As soon as the Governor releases the ensuing year's

		budget, DESE notifies communities/districts of the estimated NSS requirements. These figures are subject to change based on the final approved state budget.
Final Day of Each Month	**Treasurer**	**Notification of monthly local aid distribution.** Click www.mass.gov/treasury/cash-management to view distribution breakdown.